



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

August 15, 1991

Mr. Ron Lindsey  
Commissioner  
Texas Department of Human Services  
701 West 51st Street  
P.O. Box 149030  
Austin, Texas 78714-9030

OR91-375

Dear Mr. Lindsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252- 17a, V.T.C.S. Your request was assigned ID# 12322.

You have received three related requests from the same person for information concerning the Texas Department of Human Services Child Protective Services (CPS). The requestor seeks in part certain statistical or numerical data, much of which you claim has not been compiled in the manner requested. You also claim that some of the requested information is made confidential by section 34.08 of the Family Code and is therefore protected by section 3(a)(1) of the Open Records Act.

With regard to the requested statistical or numerical data, this office has previously held that the Open Records Act does not require the creation or preparation of new information. *See* Open Records Decision Nos. 458 (1987), 342 (1982). However, if you *do* presently maintain documents responsive to the request, and release of the information in these documents is not excepted by section 3(a)(1), then these documents must be released. *See* Open Records Decision No. 458.

With regard to the requested CPS case information, you claim that the information is excepted from required public disclosure by section 3(a)(1). That section excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You contend that the requested CPS case information is excepted by section 3(a)(1) because section 34.08 of the Family Code provides for the confidentiality of such information. Section 34.08(a) provides, in

part, that:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) of this section provide for review of CPS case information by an adoptive parent of a child and by an adult who as a child was the subject of a child abuse investigation, and are thus not applicable here. Title 40, subchapter E of chapter 49 of the Texas Administrative Code provides for release of case information to law enforcement agencies, to the parents of the child, to the victim, and to the perpetrator. *See* 40 T.A.C. §§ 49.503 and 49.510. We are unaware of any other provisions that would authorize release of such information to the general public. Thus, to the extent the records requested include "reports, records, and working papers used or developed in an investigation" under chapter 34, section 34.08(a) makes such information confidential. *See* Open Records Decision Nos. 587 (1991); 440 (1986). Accordingly, we agree that such materials are excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-375.

Very truly yours,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GCK/lb

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12386  
12387

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Enclosures: documents, Open Record Decision Nos. 587, 458, 440, 342

cc: Deborah Tedford  
Houston Chronicle  
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